APPENDIX

Excerpts from Transcript of Testimony

ESSEX COUNTY COURT

THE STATE OF NEW JERSEY

v.

EMMA D. LYNN,

Defendant.

INDICTMENT NO. 150-64

ILLEGAL POSSESSION NARCOTIC DRUG

March 17, 1966
Newark 2, New Jersey

Before:

HONORABLE JOSEPH G. LYONS,
J.C.C., and a jury.

Appearances:

BRENDAN T. BYRNE, Prosecutor,
By: LEONARD D. RONCO, Assistant Prosecutor,
For the State.

SAMUEL D. BOZZA, Esq.,
Attorney for the defendant.

ADELAIDE PYKON,
Official Court Reporter

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Colloquy

(commencing at 2-20)

(Mr. Ronco makes an opening statement to the jury on behalf of the State as follows.)

* * *

(5)* You will hear testimony as to what was done with this suspected narcotic drug, namely, that it was brought to the Newark police chemist for further analysis, and the State will offer the chemist who made the analysis of that which was found in the pocketbook of the defendant. And he will testify after making that analysis it was a narcotic drug, more particularly heroin.

That is the case of the State against this defendant. Those who were present and who can testify as to what was found in that bedroom will be offered as witnesses, and the chemist who made the analyzation of that suspected narcotic drug will also testify.

Listen carefully as the witnesses testify; judge of their credibility, their believability; watch the demeanor of the witnesses as they so testify for ultimately you must determine whether the defendant, Emma D. Lynn, is guilty or not guilty of the illegal possession of this narcotic drug based on the testimony that you hear and judging of the believability of the witnesses. I am sure you will have no difficulty in arriving at a just verdict in this case after you hear the evidence, together with the charge of the law as the Court will so state it to you.

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* All figures in parentheses indicate the number of each new page of the stenographic transcript.

Thank you for your indulgence.

(6) (Mr. Bozza makes an opening statement to the jury on behalf of the defendant as follows.)

Mr. Bozza: May it please your Honor, Mr. Ronco, Miss Zarra, and members of the jury:

The issue in this case, members of the jury, is going to be a very, very simple one. But before I go into that, many of you have sat in a criminal case and perhaps, at least, I think I would feel a little remiss in my duty to my client and perhaps even to the members of the jury if I didn't reiterate some of the fundamental principles of law that govern a criminal case and upon which we rely as part and parcel of our defense.

I may state in the beginning by saying to you that there is a very strong and vehement denial by the defendant in this case that she possessed any narcotic drug that is laid in the indictment or referred to by the prosecutor. We will deny vehemently that this room where it is alleged that a narcotic drug was found, was not at that time the bedroom of the defendant. As a matter of fact, the defense will prove to you that this room, like one or two other rooms in this house, was rented out, and it disclosed that a particular James Brewer, together with his fiancee, occupied that room, anticipatory to renting the entire first floor of this house from Emma Lynn.

(7) We will prove to you that the Lynns just prior to that had been down in Louisville, Kentucky, in regard to some inheritance that her two children got, one, Sylvia, and Bill, and that they had come back to Newark and they were going to take all of their belongings down to Louisville, and in the mean-

time this room on the first floor, together with other rooms—but this particular one—was rented by James Brewer. And, as a matter of fact, this particular house at 86 West Kinney Street is not even owned by the defendant but through inheritance it is owned by her daughter Sylvia and her son Bill. But she was there that morning when members of the Sheriff's Department came pursuant to the mandate of a search warrant. There isn't any question about it. And they came and they had a right by virtue of the provisions of the search warrant to make a search, and they did make a search, and they made a search of this bedroom that he is speaking of, that he calls a bedroom. But it was a separate and distinct rental to Brewer.

* * *

ELIZABETH BLACK, sworn.

The Court: Now, you must keep your voice up so the jury may hear your answers, please.

Direct examination by Mr. Bozza:

* * *

(commencing at 165-2)

Q. You say you don't know whether that was the specific bag but it was a bag that looked like that? A. Yes.

Q. Now, after that happened what if anything did you and he do? A. After he said the police were outside and he grabbed this bag and he put this package into it, I started up the steps.

Q. Did he follow you out or— A. No. I left him.

Q. You left him. You went out? A. Yes.

Q. Where did you go? A. I started upstairs.

Q. Were you stopped by anybody? A. Yes. He told me to come down with the rest.

Q. Did you see Brewer come out of the room? A. I couldn't say yes or no because I was excited and I really don't know.

Q. Where were you taken after you were stopped on the stairway? A. In the kitchen.

Q. Were there many people there? A. Yes, there were more people.

Q. How many would you say? A. I really don't know.

Q. How long did you remain there? A. Until they had taken Mrs. Lynn away.

* * *

Mr. Bozza: * * * (207) he was peering out the window and saw members of the Sheriff's Department of whom he was probably acquainted with, became alarmed and with haste, I assume, and it is logical to so infer, he grabbed one of the many pocketbooks that was stored in that room and he put the narcotics in the pocketbook and probably threw it near the bed or wherever it was found by the Sheriff's men? And Mrs. Black, while she didn't say so on the stand, knew there was something wrong, knowing him, seeing little packages, got out of the room and went upstairs or tried to go upstairs, when she was apprehended, and Brewer tried to come out of the room when he was apprehended by Mr. Hertig. Imagine not producing the member of the Sheriff's staff who apprehended the individual that came out of the room. That is what I say is the hand of Prov-

idence. Isn't it logical to infer that Brewer in his haste and in order to avoid the police, put those packages in this pocketbook?

By the way, members of the jury, there is no criticism here of the police in what they did. They all went there and performed their respective functions and duties, but I do seriously disagree with their version that because it was found in a pocketbook that belonged to Sylvia, that that factually gives them the basis to lodge a charge against Mrs. Lynn, (208) And it turns out that you, as a matter of circumstance, can take into account why Mrs. Lynn? Was the investigation lacking in some respect? She wasn't even the owner of the house because it was stipulated with the prosecution, in lieu of submitting the deed and the will and the tax bills, that the ownership of 86 West Kinney Street, and I think the testimony was, as well as 71, as well as 82, lies in Sylvia Lynn and her brother William, left to them by their grandmother. The grandmother left the properties to her two grandchildren.

Now, you have got to stretch the elastic pretty far to embrace as a possessor of a narcotic and to be convinced beyond a reasonable doubt that Emma possessed this narcotic. You have got to cross a lot of bridges before you do that. And I don't think that that falls within the category of proving a case beyond a reasonable doubt as against this defendant, Emma Lynn. I can not, under our system of jurisprudence, I cannot tell you that I can answer the argument of Mr. Ronco when he speaks to you and addresses you after I have terminated my discourse to you because under our system of jurisprudence I cannot speak any more. This is the last oppor-

tunity that I have in the case, and I don't want you, members of the jury, to get the impression that I am any more intelligent than you are. All I ask you to (209) do is to apply your own worldly experiences to this case. There are divergent circumstances here.

I told you that there was no duty upon the defendant to produce any evidence in this case.

You talk about reasonable doubt. Not only is there a lack of reasonable doubt in this case but I think that the defendant has proved her innocence—

Mr. Ronco: I object, your Honor. Counsel is becoming personal. He is giving the jury the benefit of his personal opinion.

The Court: Yes. The evidence he means.

Mr. Bozza: The evidence. Of course, the evidence.

The Court: Well, don't use "I".

Mr. Bozza: All right. Then I suggest to you that by the production of the evidence that she submitted in this case, in her defense, bespeaks of innocence, let alone the burden that is upon the State to establish the guilt of the defendant beyond a reasonable doubt, which burden they have never shifts for the defendant. The defendant came forward with evidence and showed all the probabilities that might have occurred here in this case. What else can defense counsel do in a case of this kind where he comes into court and subpoenas and brings into court everyone who had some particular, specific knowledge about this case with (210) the extraordinary speculation and gamble when I took the responsibility of calling Hertig, a member of the Sheriff's raiding staff? The very fact that Mr. Hertig said that he saw those two individuals come out of that room,

does that give weight and credence to the concept and the contention of the defects? I do not deny nor dispute that there was a narcotic in that room, but it was not the defendant's Emma Lynn's. It was the narcotic indulger, the deceased, Mr. Brewer. He is the one who brought that narcotic into that room. It was his. And I have pity for him. I don't like a pusher or a seller or anyone else, but an addict to me is like a man who has diabetes. He has got a disease.

Mr Ronco: Your Honor, I think counsel is now going far afield with the evidence adduced in this case. He is injecting himself.

The Court: Yes. Again, don't do it, Mr. Bozza. You are not on trial. You are an advocate.

Mr. Bozza: I suggest, then, that you should have pity for the man who indulges in narcotics because they are like people that have a disease like diabetes.

The Court: Well, again, Mr. Bozza, we are not interested in that at all. The only question before this jury is that which is laid in the indictment. Whether we like or have any sympathy for a user is * * *